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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,197	02/09/2006	Robert Kagermeier	11371-92	8132
7590 10/13/2010				
Brinks Hofer Gilson & Lione Suite 3600 455 No Cityfront Plaza Drive Chicago, IL 60611-5599			EXAMINER NGUYEN, NAM V	
			ART UNIT 2612	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,197

Applicant(s)

KAGERMEIER ET AL.

Examiner

NAM V. NGUYEN

Art Unit

2612

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-17 and 21-24 is/are allowed.
- 6) ☒ Claim(s) 1-5, 18-20 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This communication is in response to applicant's Amendment which is filed August 2, 2010.

An amendment to the claims 1, 6, 20 and 25 has been entered and made of record in the application of Kagermeier et al. for a "radio operating system and method for operating a radio system" filed February 9, 2006.

Claims 1-25 are now pending in the application.

Response to Arguments

Applicant's amendments to the rejected claims are insufficient to distinguish the claimed invention from the cited prior arts or overcome the rejection of said claims under 35 U.S.C § 103(a) as discussed below. Applicant's amendment and argument with respect to the pending claim 25, filed August 2, 2010, have been fully considered but they are not persuasive for at least the following reasons.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., when the reception parameter value is less than a first threshold value, a first operating mode is selected and if the reception parameter is greater than the first threshold value a second operating mode is selected that when the reception parameter is

Art Unit: 2612

less than the second threshold value, the first operating mode and the second mode are blocked) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, the amended claim 25 does not change the scope of the claim. As amended claim in the claim 25, the second operating command set is enable if the parameter value is greater than the first threshold value and the second threshold value and also the second operating command set is enable if the parameter value is less than the first threshold value and greater than the second threshold value. In other words, the second operating command set is enabled when the reception parameter must greater than the second threshold value, therefore the scope of the claim defines as previous claims. The examiner maintains that the references cited for the rejection of the claim 25 maintained in this office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

According to claim 25, nowhere in the specification as originally disclosed and cited by the Applicant on page 9 lines 1 to 12 of Specification, is described the limitation that when a reception parameter value is greater than a first threshold value of the parameter, a first command set and a second command set are enabled; when the reception parameter is less than the first threshold value of the reception parameter and greater than a second threshold value of the reception the second operating command set is enabled. This limitation of claim 1 contains new matter.

The applicant has failed to comply with MPEP 2163 II which states that support should be specifically pointed out for all newly claimed limitations. Applicant did not point to any support for any newly claimed limitations

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-5 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the first threshold value" and "the second value" in line 8 and line 13, respectively. There is insufficient antecedent basis for this limitation in the claim. In line 7, a first threshold and second value should be read as a first threshold value and a second threshold value.

Referring to claims 2-5 and 18-20 are rejected as being dependent upon a rejected Claim 1 above

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fujii et al. (US# 5,379,033) in view of Rodriguez et al. (US# 7,120,922 B2).

Referring to claim 25, Fujii et al. disclose a remote control system (i.e. a radio operating system) (column 1 lines 53 to 62; see Figures 1-5), comprising:

a radio receiver (3) (i.e. a radio base station unit) for configured to control an operation mechanism (4) (i.e. a device) (column 2 line 35 to 39; see Figure 1); and

a remote transmitter (1) (i.e. an operating unit) in communication with the radio receiver (3) of the operation mechanism (4) (i.e. the radio base station unit of the device) (column 2 lines 35 to 46; see Figures 1 to 3);

wherein a selection is provided between a manual operation or in an automatic operating (i.e. a plurality of operating modes) of the receiver (3), the selection corresponding to an intensity of received signal (i.e. a value of a reception parameter) with respect to a predetermined level (i.e. a threshold value) (column 5 lines 18 to 68; see Figure 4);

when the reception level of intensity that detected by the S meter (38) (i.e. the reception parameter value) is less than the predetermined level (i.e. the threshold value), the remote transmitter (1) operates in manual operation (i.e. a first operating mode is selected) and if the reception level of intensity that detected by the S meter (38) (i.e. the reception parameter value) is greater than the threshold value the remote transmitter (1) operates in an automatic operation (i.e. a second operating mode is selected) (column 3 lines 25 to 57; see Figure 4);

a parental control channel (i.e. the first operating command set mode) is enable by entering a password (i.e. the operating the enable key) (column 20 lines 47 to column 65; see Figures 23 to 27).

However, Fujii et al. did not explicitly disclose when a reception parameter value is greater than a first threshold value of the parameter, a first command set and a second command set are enabled; when the reception parameter is less than the first threshold value of the reception parameter and greater than a second threshold value of the reception the second operating command set is enabled.

In the same field of endeavor of remote control system, Rodriguez et al. teach a set of functionality command not in channel type of based on pre-selected types of channels (i.e. first command set and second command set are enabled) (column 19 line 60 to column 20 lines 46); an another set of functionality command in channel type of based on pre-selected types of channels such as parental control channel (i.e. second operating command set is enabled) (column 20 lines 47 to column 65; see Figures 23 to 27) in order to control the functional command in the way the user's intent.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to recognize using the remote control system with plurality of functional commands operate in a first command set and second command set are enabled which taught by Rodriguez et al. in the remote control system of Fujii et al. because having the remote control system with plurality of functional commands operate in the first and second operating command set would increase functionality to configure depend on the remote controller of the remote control system.

Allowable Subject Matter

Claims 1-5 and 18-20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 6-17 and 21-24 are allowed as evident by applicant's amendment and arguments.

Referring to claims 1 and 6, the following is a statement of reasons for the indication of allowable subject matter: the prior art fail to suggest limitations

when the reception parameter value is less than a first threshold value, a first operating mode is selected and if the reception parameter is greater than the first threshold value a second operating mode is selected; a first, non-safety-critical command set, is usable in each of the first and the second operating modes; a second, safety-critical command set, is usable in the second operating mode; and when the reception parameter is less than the second threshold value, the first operating mode and the second mode are blocked.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 2612

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nam V Nguyen whose telephone number is 571-272-3061. The examiner can normally be reached on Mon-Fri, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Zimmerman can be reached on 571-272-3059. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/N. V. N./

Examiner, Art Unit 2612

/Brian A Zimmerman/

Supervisory Patent Examiner, Art Unit 2612